

RECORDATION NO. 25810 FILED

AUG 30 '05

2-39 PM

SURFACE TRANSPORTATION BOARD

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ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

OF COUNSEL
URBAN A. LESTER

August 30, 2005

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Memorandum of Mortgage, dated as of August 30, 2005, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Debtor: Babcock & Brown Rail Funding LLC
885 Second Avenue, 49th Floor
New York, New York 10017

[Secured Party: Bayerische Hypo-Und Vereinsbank AG, Agent
FPA 4 Lease/Asset Finance
Am Tucherpark 1 (FPA)
80538 Munich
Germany]

Mr. Vernon A. Williams
August 30, 2005
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A description of the railroad equipment covered by the enclosed document is:

1. 120 Aluminum AutoFlood III rapid discharge rotary coupler Coal Hopper railcars: CMO 504000, CMO 504002 – CMO 504104, and CMO 504106 – CMO 504121, and
2. 120 Aluminum AutoFlood III rapid discharge rotary coupler Coal Hopper railcars: CMO 504001, CMO 504105 and CMO 504122 – CMO 504239.

A short summary of the document to appear in the index is:

Memorandum of Mortgage.

Also enclosed is a check in the amount of \$33.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/anm
Enclosures

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SURFACE TRANSPORTATION BOARD

EXECUTION COPY

MEMORANDUM OF MORTGAGE

Memorandum of Mortgage, made and entered into as of August 30, 2005 between BABCOCK & BROWN RAIL FUNDING LLC (the "Debtor") and BAYERISCHE HYPO-UND VEREINSBANK AG, as Agent under the Security Agreement referred to below (together with its successors and permitted assigns, the "Secured Party"). Terms used in this instrument have the meanings assigned thereto in the Amended and Restated Security Agreement dated as of October 18, 2002 (as supplemented, including by Security Agreement Supplement No. 21 dated the date hereof, the "Security Agreement") between the Secured Party and the Debtor.

WITNESSETH:

The undersigned and the Secured Party have entered into the Security Agreement, by which the Debtor has granted a security interest in certain railroad equipment bearing reporting marks and road numbers as listed on Exhibit A attached hereto and in each lease referred to on Exhibit B attached hereto to the Secured Party in order to secure the Debtor's performance of its obligations as described in the Security Agreement.

IN WITNESS WHEREOF, the party hereto has caused this memorandum to be duly executed by its officer duly authorized as of the date and year first above written.

BABCOCK & BROWN RAIL FUNDING LLC

By 

Name: Ross Sullivan

Title: Vice President

STATE OF CALIFORNIA)
) ss.:
COUNTY OF SAN FRANCISCO)

On the 29th day of August in the year 2005 before me personally came Ross Sullivan to me known, who, being by me duly sworn, did depose and say that he reside(s) at 1090 Butterfield Road, San Anselmo, CA 94960; that he is the Vice President (duly appointed) of Babcock & Brown Rail Funding LLC, the limited liability company described in and which executed the above instrument; and that he signed his name thereto by authority of the officers of said limited liability company.

Heidi Wagner
Notary Public

[Notarial Seal]



Memorandum of Mortgage

**Exhibit A
to Memorandum of Mortgage**

EQUIPMENT

| Lease # | # Cars | Year Built | Description | Reporting Marks | Casualty Marks |
|---------|--------|------------|--|--|----------------|
| 1 | 120 | 2005 | Aluminum AutoFlood III rapid discharge rotary coupler Coal Hoppers, 286,000 lbs. GRL | CMO 504000, 504002-504104, inclusive; and 504106-504121, inclusive | None |
| 2 | 120 | 2005 | Aluminum AutoFlood III rapid discharge rotary coupler Coal Hoppers, 286,000 lbs. GRL | CMO 504001, 504105, and 504122- 504239, inclusive | None |

Exhibit B
to Memorandum of Mortgage

LIST OF LEASES AND OTHER OPERATIVE AGREEMENTS

Lease No. 1 – Union Pacific Railroad Company

Railroad Equipment Master Lease entered into as of April 15, 1998, by and between The David J. Joseph Company (f/k/a DJJ Transportation Services, Inc.) and Union Pacific Railroad Company, to the extent the same relates to the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Master Lease Schedule No. 003 to Railroad Equipment Master Lease dated August 5, 2005, by and between The David J. Joseph Company (f/k/a DJJ Transportation Services, Inc.) and Union Pacific Railroad Company.

Memorandum of Railroad Equipment Master Lease Agreement and Schedule No. 003 entered into as of August 5, 2005, The David J. Joseph Company (f/k/a DJJ Transportation Services, Inc.) and Union Pacific Railroad Company.

Acceptance Certificate dated July 28, 2005, executed by Union Pacific Railroad Company, in respect of the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Warranty Bill of Sale dated July 29, 2005, from FreightCar America, Inc. to The David J. Joseph Company, and each Certificate of Acceptance executed by The David J. Joseph Company in relation to the railcars identified in such Warranty Bill of Sale.

Purchase Agreement [DJJ] dated as of August 30, 2005, between The David J. Joseph Company and Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Bill of Sale dated August 30, 2005 from The David J. Joseph Company to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Assignment and Assumption Agreement dated as of August 30, 2005, between The David J. Joseph Company and Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Notice and Acknowledgment dated August 23, 2005, made by The David J. Joseph Company and Babcock & Brown Rail Funding LLC to Union Pacific Railroad Company in respect of the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Notice Pursuant to Notice and Acknowledgment dated August 30, 2005, made by Babcock & Brown Rail Funding LLC and The David J. Joseph Company to Union

Pacific Railroad Company, in respect of the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Warranty Assignment [UPRR #1] dated as of August 30, 2005, between The David J. Joseph Company, as assignor thereunder, and Babcock & Brown Rail Funding LLC, as assignee thereunder, in respect of the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Manufacturer's Consent dated August 30, 2005, made by FreightCar America, Inc. to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Letter Agreement dated August 30, 2005 from Babcock & Brown Rail Funding LLC addressed to The David J. Joseph Company, in respect of the price per railcar for the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Side Letter dated August 30, 2005 from The David J. Joseph Company addressed to Babcock & Brown Rail Funding LLC, in respect of the original equipment cost for the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Lease No. 2 – Union Pacific Railroad Company

Railroad Equipment Master Lease entered into as of April 15, 1998, by and between The David J. Joseph Company (f/k/a DJJ Transportation Services, Inc.) and Union Pacific Railroad Company, to the extent the same relates to the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Master Lease Schedule No. 004 to Railroad Equipment Master Lease dated August 5, 2005, by and between The David J. Joseph Company (f/k/a DJJ Transportation Services, Inc.) and Union Pacific Railroad Company.

Memorandum of Railroad Equipment Master Lease Agreement and Schedule No. 004 entered into as of August 5, 2005, The David J. Joseph Company (f/k/a DJJ Transportation Services, Inc.) and Union Pacific Railroad Company.

Acceptance Certificate dated August 23, 2005, executed by Union Pacific Railroad Company, in respect of the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Warranty Bill of Sale dated August 18, 2005, from FreightCar America, Inc. to The David J. Joseph Company, and each Certificate of Acceptance executed by The David J. Joseph Company in relation to the railcars identified in such Warranty Bill of Sale.

Purchase Agreement [DJJ] dated as of August 30, 2005, between The David J. Joseph Company and Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Bill of Sale dated August 30, 2005 from The David J. Joseph Company to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Assignment and Assumption Agreement dated as of August 30, 2005, between The David J. Joseph Company and Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Notice and Acknowledgment dated August 23, 2005, made by The David J. Joseph Company and Babcock & Brown Rail Funding LLC to Union Pacific Railroad Company in respect of the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Notice Pursuant to Notice and Acknowledgment dated August 30, 2005, made by Babcock & Brown Rail Funding LLC and The David J. Joseph Company to Union Pacific Railroad Company, in respect of the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Warranty Assignment [UPRR #2] dated as of August 30, 2005, between The David J. Joseph Company, as assignor thereunder, and Babcock & Brown Rail Funding LLC, as assignee thereunder, in respect of the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Manufacturer's Consent dated August 30, 2005, made by FreightCar America, Inc. to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Letter Agreement dated August 30, 2005 from Babcock & Brown Rail Funding LLC addressed to The David J. Joseph Company, in respect of the price per railcar for the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Side Letter dated August 30, 2005 from The David J. Joseph Company addressed to Babcock & Brown Rail Funding LLC, in respect of the original equipment cost for the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Together with all substitutions, replacements and renewals of the property above described, and all property which shall hereafter become physically attached to or incorporated in the property above described, whether the Company now has rights therein or such rights shall hereafter be acquired by it.

CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: _____

8/30/85



Robert W. Alvord